

In 1923, the General Assembly enacted Public Law 1923 chapter 489 (the Providence System) which established a comprehensive system of contributions, benefits, and regulations for the retirement of the City of Providence's employees that is administered by the City of Providence's Retirement Board. ASF ¶ 3; *see also id.* Ex. A (P.L. 1923, ch. 489). The Providence

System includes an accidental disability retirement scheme. *Id.* ¶ 4. In 1980, the Providence Home Rule Charter (the Charter) was enacted and went into effect following ratification by the General Assembly and a referendum vote of the citizens of Providence on January 3, 1983. *Id.* ¶ 6. The Charter’s enactment replaced the General Assembly with the Providence City Council (the City Council) as the legislative authority for establishing the municipal pension program. *Id.* ¶ 7. The City Council has had exclusive legislative authority over the Providence System since 1983. *Id.* ¶ 8.

In 1936, the General Assembly enacted Public Law 1936, chapter 2338 which established the Employees Retirement System of the State of Rhode Island (ERSRI). *Id.* ¶ 11. Thereafter, in 1951, the General Assembly created the Municipal Employees Retirement System (the MERS) which is managed and administered by ERSRI. *Id.* ¶ 12; *see also* G.L. 1956 § 45-21-32. Additionally, the MERS permits accidental disability retirement. *Id.* ¶ 20; *see also* G.L. §§ 45-21-22, 45-21.2-9. Municipalities’ participation in the MERS is voluntary and most municipalities participate; however, the City of Providence never has participated in the MERS. (ASF ¶¶ 13-14.) In 1968, the General Assembly enacted an Optional Retirement for Members of Police Force and Firefighters within the MERS, that is managed by ERSRI and provides municipalities with an alternative retirement option for police and firefighters. *Id.* ¶¶ 16-17; *see also* §§ 45-21.2-1 *et seq.*

In 1986, the General Assembly enacted the Cancer Benefits for Firefighters statute that is codified in chapter 19.1 of title 45 of the General Laws (the Statute). ASF ¶ 23; *see also* G.L. 1956 chapter 19.1 of title 45. The Statute includes a presumption that “[a]ny type of cancer found in a firefighter is conclusively presumed to be an occupational cancer as that term is defined in R.I.G.L. § 45-19.1-2.” ASF ¶ 27; *see also* § 45-19.1-4(a). Occupational cancer is defined as “a cancer arising out of his or her employment as a firefighter, due to injury from exposures to smoke, fumes,

or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty in the fire department.” ASF ¶ 27; *see also* § 45-19.1-2.

On May 9, 2008, the City Council enacted an Ordinance Establishing a Presumptive Cancer Benefits & Wellness Incentive for Firefighters (the Ordinance). ASF ¶ 10; *see also id.* Ex. B (the Ordinance). The Ordinance creates a rebuttable presumption that a firefighter’s cancer diagnosis, that arises after the start of their employment, was developed during the course and scope of their employment as a firefighter if five criteria are established. (Providence Code of Ordinances Chapter 17 Article III Division 7 § 17-135.) If said criteria are met and the firefighter is determined to be disabled because of the cancer diagnosis, then the firefighter shall be entitled to an accidental disability pension. *Id.* § 17-138.1.

B

The Parties and the Underlying Dispute

The Providence Retired Police and Firefighter’s Association (Plaintiff) is an organization that represents the retired members of the Providence Police Department and the Providence Fire Department. (ASF ¶ 1.) In this case, Plaintiff is representing the interests of former employees of the Providence Fire Department that have been diagnosed with cancer after their date of retirement. (Compl. ¶ 3.) Plaintiff inquired with the Providence Retirement Board as to the applicability of the Statute to the members and retirees of the Providence Fire Department and in response, the Providence Retirement Board explained that the Statute was not applicable because the Statute only applied to firefighters participating in the MERS, and the Providence Fire Department does not. (ASF ¶¶ 13-14, 29-30.) Consequently, the City of Providence (Defendant or the City) informed Plaintiff that it will not process and/or consider any applications filed by a retiree of the

Providence Fire Department under the Statute; instead, the City will process and/or consider such applications under the Ordinance. *Id.* ¶ 31.

In response, Plaintiff filed a Complaint requesting (1) a declaration pursuant to G.L. 1956 § 9-30-1 that the City should process and/or consider the Providence firefighters' occupational disability pension applications under the Statute instead of the Ordinance and (2) compensatory damages. (Compl. ¶ 28(A)-(B).) Defendant answered the Complaint on January 7, 2021. (Docket.) On January 6, 2023, the parties submitted an Agreed Statement of Facts "in anticipation of the parties filing cross-motions for partial summary judgment[.]" (ASF 1.)

Thereafter, on January 20, 2023, the parties stipulated to a briefing schedule for their cross-motions for summary judgment. Docket; *see also* Stipulation Re: Briefing Schedule. On March 13, 2023, Defendant filed its Motion for Partial Summary Judgment (Defendant's Motion) and Plaintiff filed its Motion for Partial Summary Judgment (Plaintiff's Motion) and memorandum of law in support thereof. (Docket.) On April 10, 2023, Defendant filed its response to Plaintiff's Motion and Plaintiff filed its reply to Defendant's Motion. *Id.* The Court heard argument on the cross-motions for summary judgment on May 23, 2023. *Id.*

II

Standard of Review

"Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (quoting *DeMaio v. Ciccone*, 59 A.3d 125, 129 (R.I. 2013)). Indeed, "[s]ummary judgment is appropriate only when the 'pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as [a] matter of law.'" *Sola v. Leighton*, 45 A.3d

502, 506 (R.I. 2012) (quoting *Plunkett v. State*, 869 A.2d 1185, 1187 (R.I. 2005)). However, “[a] matter that hinges on statutory interpretation is ripe for summary judgment.” *Epic Enterprises LLC v. Bard Group, LLC*, 186 A.3d 587, 589 (R.I. 2018).

III

Analysis

Plaintiff argues that the Statute clearly and unambiguously indicates that it applies to all firefighters in Rhode Island, including active and retired members of the Providence Fire Department, because (1) the language of § 45-19.1-3(a) encompasses all firefighters and does not specifically exclude firefighters that do not participate in MERS and (2) the use of the term “firefighter” in § 45-19.1-2(c) does not limit who is considered a firefighter; instead, it encompasses all firefighters within the State. (Memorandum of Law in Support of Plaintiff’s Motion for Partial Summary Judgment (Pl.’s Mem.) 5-6.) In support, Plaintiff submits that our Supreme Court has previously explained that the use of “any fire fighter” in § 45-19.1-3 is all encompassing and as such, § 45-19.1-3 does not restrict the Statute’s application to only firefighters that participate in MERS. *Id.* at 8 (citing *City of East Providence v. IAFF Local 850*, 982 A.2d 1281 (R.I. 2009) (*East Providence*)). Additionally, Plaintiff contends that the clear language of § 45-21.2-9(e) (occupational cancer disability pension statute within the Retirement for Accidental Disability Act) provides further support that the Legislature intended to provide all firefighters, not just those participating in MERS, cancer benefits under § 45-19.1-3. *Id.* at 7.

Conversely, Defendant argues that our Supreme Court did not conduct a *de novo* review of the Statute in *East Providence* to determine whether the Statute applies to municipalities that do not participate in MERS, such as the City, which was explained by the Supreme Court in *Lang v. Municipal Employees’ Retirement System of Rhode Island*, 222 A.3d 912 (R.I. 2019). (Def.’s Mot.

5.) Additionally, Defendant avers that our Supreme Court determined in *Betz v. Paolino*, 605 A.2d 837 (R.I. 1992) (*Betz*) that matters related to retirees of the City are not governed by the more general provisions of the General Laws, but instead are governed by the more specific provisions (i.e., the Ordinance) relating to the City’s retirees. *Id.* at 6-7. In other words, Defendant submits that members and retirees of the Providence Fire Department must look to the Ordinance, not the Statute, for cancer disability benefits in accordance with our Supreme Court’s holding in *Betz*. *See id.* at 7-8.

A

Interpretation of § 45-19.1-3

When interpreting a statute, the Court must first determine whether the statute is ambiguous. *Bucci v. Lehman Brothers Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013). “It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012) (quoting *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009)). “In matters of statutory interpretation our ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” *Progressive Casualty Insurance Company v. Dias*, 151 A.3d 308, 311 (R.I. 2017) (quoting *Whittemore v. Thompson*, 139 A.3d 530, 540 (R.I. 2016)).

The statute at issue in this case is § 45-19.1-3(a), which states:

“Any fire fighter, including one employed by the state, or a municipal fire fighter employed by a municipality that participates in the optional retirement for police officers and fire fighters, as provided in chapter 21.2 of this title, who is unable to perform his or her duties in the fire department by reason of a disabling occupational cancer which develops or manifests itself during a period while the fire fighter is in the service of the department, and any retired member of the fire department of any city or town who

develops occupational cancer, is entitled to receive an occupational cancer disability, and he or she is entitled to all of the benefits provided for in chapters 19, 21 and 21.2 of this title and chapter 10 of title 36 if the fire fighter is employed by the state.” Section 45-19.1-3(a).

Specifically, the question before the Court is whether the term “any fire fighter” as used in § 45-19.1-3(a), includes members and retirees of the Providence Fire Department even though the City does not participate in the MERS. Defendant argues that this very question was answered by our Supreme Court in *Betz*. See Def.’s Mot. at 6-8.

In *Betz*, the Supreme Court explained that § 45-19.1-3 is a general statute that was enacted by the General Assembly in 1986. *Betz*, 605 A.2d at 840. The Court went on to explain that “[i]n a series of cases we have held that general statutes purporting to benefit firefighters or police did not supersede the special statute that had been enacted by the Legislature in respect to the city of Providence.” *Id.* (citing *Local No. 799, International Association of Firefighters AFL–CIO v. Napolitano*, 516 A.2d 1347 (R.I. 1986); *Police and Firefighter’s Retirement Association of Providence v. Norberg*, 476 A.2d 1034 (R.I. 1984); *Santanelli v. City of Providence*, 105 R.I. 208, 250 A.2d 849 (1969); *Landers v. Reynolds*, 92 R.I. 403, 169 A.2d 367 (1961)). Furthermore, the Court held that there was “no indication that the General Assembly manifested a different specific intent in enacting § 45-19.1-3[,]” and as such, the “general rule of construction that a special act should prevail over a statute of general application” applied to the City. *Id.* Consequently, the Court determined that § 45-19.1-3 was not intended to provide all firefighters with occupational cancer benefits. *Id.*

On the other hand, seventeen years after *Betz*, our Supreme Court issued its decision in *East Providence*, which Plaintiff argues addressed the very argument that Defendant is making, i.e., the Statute only applies to firefighters of municipalities that participate in the MERS. Our Supreme Court determined that such an argument is “inconsistent with the express language of [§

45-19.1-3]” because “[n]othing in § 45-19.1-3 restricts the statute’s application to firefighters participating in the optional retirement plan [i.e., the MERS].” *East Providence*, 982 A.2d at 1288. Furthermore, the Court explained that the Statute uses the “all inclusive phrase, ‘any fire fighter’” and as such, “[t]he word ‘any’ followed by the term, ‘including,’ is all encompassing . . . [and] [t]his language does not indicate any intent on the part of the General Assembly to restrict these cancer benefits to only certain firefighters.” *Id.* Moreover, the Supreme Court explained that “[h]ad the General Assembly intended to limit [§ 45-19.1-3’s] application to municipal firefighters participating in the [MERS], it could have done so.” *Id.* Consequently, the Court held that § 45-19.1-3 “expressly provides injured on-duty benefits provided by chapters 19, 21, and 21.2 of title 45, and chapter 10 of title 36 . . . [and] explicitly provides injured on-duty benefits as governed by § 45-19-1 to firefighters who are diagnosed with cancer.” *Id.* at 1289.

The Court agrees with Plaintiff that our Supreme Court’s decision in *East Providence* supports that § 45-19.1-3 does not restrict its application to only firefighters of municipalities that participate in the MERS. As explained by the Supreme Court, “[n]othing in § 45-19.1-3 restricts the statute’s application to firefighters participating in the optional retirement plan[.]” and as such, it is clear to this Court that the occupational cancer disability benefits of § 45-19.1-3 are not limited to firefighters of municipalities that participate in the MERS. *East Providence*, 982 A.2d at 1288. The Statute states “[a]ny fire fighter, including one employed by the state, or a municipal fire fighter employed by a municipality that participates in the optional retirement for police officers and fire fighters.” Section 45-19.1-3 (emphasis added). As our Supreme Court explained, “[t]he word ‘any’ followed by the term, ‘including,’ is all encompassing” and therefore, this Court determines that the occupational cancer disability benefits in § 45-19.1-3 apply to *all* firefighters in the State and not just those participating in the MERS. *East Providence*, 982 A.2d at 1288.

It is clear to the Court that § 45-19.1-3 is not limited to firefighters of municipalities that participate in the MERS, and therefore, the occupational cancer disability benefits of § 45-19.1-3 are available to the members and retirees of the Providence Fire Department even though the City does not participate in the MERS. Furthermore, it is apparent that § 45-19.1-3 was intended to provide cancer disability benefits to *all* firefighters in the State, in accordance with the legislative intent and our Supreme Court's explanation in *East Providence*, and it would be absurd for the Court to conclude that Providence firefighters are excluded from said benefits when § 45-19.1-3 is meant to apply to all firefighters. *Id.*; *see also Progressive Casualty Insurance Company*, 151 A.3d at 311 (the Court's ultimate goal when interpreting statutes is to give effect to the purpose of the act as intended by the Legislature).

Accordingly, § 45-19.1-3 applies to the City of Providence and the Providence Fire Department. Therefore, members and retirees of the Providence Fire Department may apply for occupational cancer disability benefits under § 45-19.1-3 and the City shall process and/or consider such applications under the terms of § 45-19.1-3.

IV

Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion for Partial Summary Judgment as to Count I of the Complaint and **DENIES** Defendant's Motion for Partial Summary Judgment as to Count I of the Complaint.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: The Providence Retired Police and Firefighter's Association v. The City of Providence

CASE NO: PC-2020-8024

COURT: Providence County Superior Court

DATE DECISION FILED: June 26, 2023

JUSTICE/MAGISTRATE: Cruise, J.

ATTORNEYS:

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